



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission

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SUBJECT: MURs 7199, 7219 and 7242 (Patrick Murphy et al.) – Circulation of Revised Factual and Legal Analysis

At the April 10, 2018, Executive Session, the Commission approved OGC's recommendations in these three matters to find no reason to believe as to allegations relating to a stock buyback, a bank loan, and its repayment. There were, however, insufficient votes to approve OGC's recommendations regarding the complaints' coordination allegations. The Commission directed OGC to amend the Factual and Legal Analysis to omit the discussion of the coordination allegations and circulate the amended document for Commission approval. The amended Factual and Legal Analysis attached incorporates the direction to remove the discussion of the coordination allegations.

Accordingly, we recommend that Commission:

1. Approve the attached Factual and Legal Analysis; and
2. Close the files.

Attachments:

1. Amended Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENTS:** Patrick Murphy **MURs:** 7119, 7219 and 7242

5 Friends of Patrick Murphy and Brian Foucart
6 in his official capacity as treasurer

7
8 Thomas Murphy, Jr.

9
10 Coastal Construction Group of South Florida, Inc.
11

12 **I. INTRODUCTION**

13 The complaints in these matters allege that 2016 Senate candidate Patrick Murphy ("the
14 Candidate") and his campaign committee, Friends of Patrick Murphy and Brian Foucart in his
15 official capacity as treasurer (the "Committee"), accepted excessive and prohibited contributions,
16 in violation of 52 U.S.C. §§ 30116(f) and 30118 in connection with a bank loan that was
17 procured and repaid with the Candidate's assistance.

18 Specifically, Complainants allege that Coastal Construction Group of South Florida, Inc.
19 ("Coastal Construction") and Thomas Murphy, Jr., who is the Candidate's father and Coastal
20 Construction's Board Chairman and Chief Executive Officer, made an illegal contribution when
21 they bought back \$1 million in Coastal Construction stock from the Candidate, who then used
22 the proceeds both to secure a bank loan to the Committee, and to repay the Committee's loan.
23 The Complainant in MUR 7219 also alleges that Respondents violated the regulation limiting
24 post-election committee repayments of personal loans from a candidate, and that the Committee
25 misreported the loan.

26 Respondents assert that the Candidate obtained the \$1 million in Coastal Construction
27 stock prior to and independent of his Senate candidacy, and he properly reported it as a personal

1 asset. Respondents state that the Candidate sold his stock for fair market value, and he properly
2 used the proceeds, which were his personal funds, as collateral for the Committee's bank loan
3 and to repay the loan, and the Committee properly reported both transactions.¹ Respondents also
4 maintain that the regulation regarding repayment of candidate loans is inapplicable because the
5 Candidate repaid the Committee's loan, not the reverse.

6 The available information indicates that the proceeds from the sale of the Coastal
7 Construction stock were the Candidate's personal funds, and could be used to secure or repay a
8 loan on behalf of the Committee. Further, the repayment did not violate Commission
9 regulations, and it appears to have been properly reported. Accordingly, the Commission finds
10 no reason to believe that Patrick Murphy, Friends of Patrick Murphy and Brian Foucart in his
11 official capacity as treasurer, Coastal Construction Group of South Florida, Inc., Thomas
12 Murphy, Jr. violated 52 U.S.C. §§ 30104(b), 30116 or 30118 with regard to the procurement,
13 repayment, or reporting of the Committee's bank loan.

14 II. FACTUAL AND LEGAL ANALYSIS

15 A. Facts

16 Patrick Murphy was a candidate for the U.S. Senate in the 2016 election cycle. The
17 Committee was his 2016 principal campaign committee.

18 Before his election to the House of Representatives in 2012, the Candidate was Vice
19 President and owned shares in Coastal Construction, a closely held corporation owned by the
20 Murphy family.² On December 28, 2012, before he entered Congress, the Candidate received

¹ MUR 7199 Resp. at 3-5; MUR 7219 Resp. at 1-3; MUR 7242 Resp. at 1, 5.

² MUR 7199 Compl. at 1; MUR 7199 Resp. at 1-2.

1 additional shares in Coastal Construction from his parents, Leslie and Thomas Murphy, Jr.³ The
2 Candidate disclosed his ownership of the Coastal Construction shares as personal assets in his
3 Personal Financial Disclosure Reports filed with the Clerk of the House of Representatives
4 (“House disclosure reports”).⁴ On the 2015 and 2016 House disclosure reports attached to the
5 Response, the Candidate valued the shares as being worth \$1-5 million.⁵

6 On October 25, 2016, Murphy sold a portion of his shares in Coastal Construction back
7 to the company for \$1,000,120.⁶ Respondents maintain that the sale was conducted in
8 accordance with, and under the valuation method established by, a shareholders’ agreement.⁷
9 The Candidate then pledged the proceeds as collateral for a \$1 million bank loan the Committee
10 obtained at an interest rate of 3.5% and which matured on April 25, 2017.⁸ The Committee
11 disclosed the loan before the election on a 48-hour Notice of Contributions and also on its 2016
12 Post-General Election Report.⁹

³ MUR 7199 Resp. at 2. *See also* Thomas Murphy, Jr. Decl. ¶ 4 (Jan. 17, 2017).

⁴ MUR 7199 Resp. at 2, Ex. B; MUR 7242 Resp. 1, Ex. B.

⁵ *Id.* The disclosure reports attached to the Response only cover 2015 and 2016, but his House disclosure reports for 2012 through 2014 also show the shares and the same value range.

⁶ MUR 7199 Resp. at 3-5; MUR 7242 Resp. at 3-5; *see also* Thomas Murphy, Jr. Decl. ¶¶ 5-6.

⁷ The terms of the sale were formally approved by a written consent of the Board of Directors and Shareholders of Coastal Construction, which found that the sale was in the best interest of the company. MUR 7199 Resp. at 3-5; MUR 7242 Resp. at 3-5; *see also* Thomas Murphy, Jr. Decl. ¶ 7.

⁸ MUR 7199 Resp. at 3-5; MUR 7242 Resp. at 3-5.

⁹ MUR 7199 Resp. at 3-5; MUR 7242 Resp. at 3-5. *See* Committee 2016 Post-General Election Report, <http://docquery.fec.gov/pdf/587/201612130200766587/201612130200766587.pdf>; Committee 48 Hour Notice of Contributions/Loans Received, <http://docquery.fec.gov/pdf/650/201610310200642650/201610310200642650.pdf>.

On December 1, 2016, Murphy repaid the loan using the same \$1 million that he pledged as collateral.¹⁰ The Committee reported the loan repayment on its 2016 Year-End Report as an in-kind contribution from Murphy to the Committee.¹¹

B. Analysis

A contribution is any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.¹² The Act provides that no person may make, and no candidate, officer, or employee of a political committee (other than an independent-expenditure-only committee or a hybrid account) shall knowingly accept any contribution that violates the contribution limits¹³ set forth in 52 U.S.C. § 30116, or the prohibitions on contributions by national banks, corporations, or labor organizations set forth in 52 U.S.C. § 30118.

As a general exception to this rule, Commission regulations provide, “candidates for federal office may make unlimited expenditures from personal funds,” which include contributions to their principal campaign committees.¹⁴ Personal funds include “personal assets,” which are “[a]mounts derived from any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had legal and rightful title or an equitable interest,” as well as

¹⁰ MUR 7214 Resp. at 2; MUR 7242 Resp. at 2.

¹¹ MUR 7214 Resp. at 2; MUR 7242 Resp. at 2; Committee 2016 Year-End Report, <http://docquery.fec.gov/pdf/890/201701310200021890/201701310200021890.pdf>.

¹² 52 U.S.C. § 30101(8)(A)(i) (emphasis added).

¹³ During the 2016 election cycle, the individual contribution limit was \$2,700 per election.

¹⁴ 11 C.F.R. §§ 110.10, 100.33. *See also* Advisory Op. 1991-90 (Hoagland) (Jan. 15, 1991) (affirming that Commission regulations permit a candidate to make unlimited expenditures, including personal loans, from his personal funds); Advisory Op. 1985-33 (Collins) (Nov. 22, 1985) (same).

1 “income,” which includes “[i]ncome from the candidate’s stock or other investments
2 including...proceeds from the sale or liquidation of such stocks or investments.”¹⁵ A candidate
3 may sell a personal asset for fair market value and then use the income derived from the sale to
4 benefit his authorized campaign committee without violating the Act, so long as the asset is sold
5 at the “normal and usual market price.”¹⁶

6 Under the Act, a “loan” includes a guarantee, endorsement, and any other form of
7 security.¹⁷ Each endorser or guarantor shall be deemed to have contributed that portion of the
8 total amount of the loan for which he or she agreed to be liable in a written agreement.¹⁸ A loan
9 that exceeds the contribution limits, or otherwise violates 52 U.S.C. §§ 30116 or 30118, is
10 unlawful, whether or not it is repaid.

11 A loan to a political committee or a candidate by a commercial bank is exempt from the
12 definition of contribution, if such loan is made in accordance with applicable law and in the
13 ordinary course of business.¹⁹ A loan will be deemed to be made in the ordinary course of
14 business if it: “(1) [b]ears the usual and customary interest rate of the lending institution for the
15 category of loan involved; (2) [i]s made on a basis that assures repayment; (3) [i]s evidenced by
16 a written instrument; and (4) [i]s subject to a due date or amortization schedule.”²⁰ A loan is

¹⁵ 11 C.F.R. §§ 110.10, 100.33(a), (b).

¹⁶ See Factual and Legal Analysis at 6 MUR 6412 (Blumenthal) (Commission found it permissible for a candidate to sell his interest in a residence they owned jointly to his wife and then loan the proceeds of the sale to his principal campaign committee); Advisory Op 1984-60 (Mulloy) (Jan. 11, 1986) (Commission found it permissible for a candidate to sell his interest in a partnership to a family member and use the proceeds to retire campaign debt, so long as the sale was made at the “usual and normal” market price).

¹⁷ 11 C.F.R. § 100.52(b).

¹⁸ 11 C.F.R. §§ 100.52(b)(3), 100.82(c).

¹⁹ 11 C.F.R. § 100.82(a).

²⁰ *Id.*

1 considered “made on a basis that assures repayment” if it is obtained using a perfected security
2 interest in collateral owned by the candidate, the fair market value of the collateral is equal to or
3 greater than the loan amount, and the candidate provides documentation to show that the lending
4 institution has a perfected security interest in the collateral.²¹ Sources of collateral include
5 goods, accounts receivable, and cash on deposit.²²

6 Here, the Committee’s loan from Amalgamated Bank was guaranteed by the Candidate’s
7 personal funds. The stock in Coastal Construction, which Murphy sold to get the \$1 million to
8 guarantee the Committee’s loan, had been Murphy’s personal property since December 2012 and
9 had been declared as a personal asset on his House disclosure reports for 2012 through 2016.²³
10 The Candidate sold the stock back to Coastal Construction for the “Book Value” as defined in
11 Coastal Construction’s shareholders’ agreement.²⁴ The Complaints provide no facts to support
12 the allegations that the shares of the closely held company had “no real market value” or that the
13 value of the shares was “contrived.”²⁵ The Candidate’s father provided a sworn statement that
14 the issuance and sale of the stock was governed by a shareholders’ agreement, executed on
15 December 9, 1998, which establishes that the “Book Value” of its stock would be determined by
16 the fair market value, as calculated by a certified public accountant using generally accepted
17 accounting principles.²⁶ Without information to refute the assertions in this declaration, there is

²¹ 11 C.F.R. § 100.82(e)(1)(i).

²² *Id.*

²³ MUR 7199 Resp. at 3-4, Ex. B.

²⁴ MUR 7199 Resp. at Ex. B.

²⁵ MUR 7242 Compl. at 2.

²⁶ Thomas Murphy, Jr. Decl. ¶ 5.

1 no basis to suggest that the Candidate did not receive fair market value for the sale of his
2 shares.²⁷

3 Further, the terms of the \$1 million loan the Candidate guaranteed for the Committee
4 seem to satisfy the requirements of 11 C.F.R. § 100.82. The loan to the Committee by
5 Amalgamated Bank, a national commercial bank, bears a 3.5% interest rate, which, according to
6 the terms of the Credit Agreement, was equal to “the interest rate per annum equal to the Base
7 Rate in effect on such day, plus the Applicable Margin” and was not less than 3.25%.²⁸
8 Additionally, the loan was made on a basis that assured repayment since it was guaranteed by \$1
9 million cash collateral. Finally, the terms of the loan are reflected in the written Credit
10 Agreement Murphy executed on October 25, 2016, and the loan had a maturity date of April 25,
11 2017.²⁹ Respondents assert that the loan was at the usual and customary interest rate of the
12 lending institution for this type of secured loan. Complainants offer no information which
13 refutes this claim, and we are not aware of any contrary information.

14 In addition, the allegation that Murphy’s repayment was improper is based on a
15 misapplication of 11 C.F.R. § 116.11. Commission regulations also restrict how an authorized
16 committee may repay personal loans by a candidate that exceed \$250,000.³⁰ “Personal loans,”
17 for the purposes of 11 C.F.R. § 116.11, include “loans made to a candidate’s authorized
18 committee that are endorsed or guaranteed by the candidate or that are secured by the candidate’s

²⁷ See AO 1984-60 (Mulloy) (Stating that an appraisal by an expert using generally acceptable appraisal methods is acceptable as prima facie evidence of a property’s usual market price, although it does not rule out other valuation methods that would “reliably establish such price or value”); *see also* Factual and Legal Analysis at 6 MUR 5421 (Kerry for President) (Commission accepted appraisal by a state-certified appraiser as “prima facie evidence of the fair market value” of the property).

²⁸ MUR 7199 Resp. at Ex. B.

²⁹ *Id.*

³⁰ 11 C.F.R. § 116.11(b), (c).

1 personal funds.”³¹ An authorized committee “[m]ay repay the entire amount of the personal
2 loans using contributions to the candidate or the candidate’s authorized committee provided that
3 those contributions were made on the day of the election or before” and “[m]ay repay up to
4 \$250,000 of the personal loans from contributions made to the candidate or the candidate’s
5 authorized committee after the date of the election,” if it does so within 20 days of the election.³²
6 If the aggregate outstanding balance of the personal loans exceeds \$250,000 after the election,
7 the committee may only use the amount of cash on hand as of the day after the election to repay
8 all or part of the personal loans, and must treat the portion of any outstanding balance as a
9 contribution by the candidate, which should be reported in the first disclosure report filed after
10 the election.³³

11 Complainant misapplies the regulation, which restricts loan repayments *by committees*.
12 The Committee did not repay a personal loan from the Candidate. Rather, the Candidate repaid
13 the Committee’s bank loan, and the Committee properly reported the loan repayment as an in-
14 kind contribution. Further, there is no information to suggest the repayment of the loan violated
15 the Act or any other Commission regulation.

16 Further, the Complaint’s contention that the Committee improperly reported the single
17 loan as two \$1 million loans in its 2016 Post-General Election Report is incorrect.³⁴ The
18 Committee properly reported both the loan and Murphy’s guaranty in accordance with 11 C.F.R.

³¹ 11 C.F.R. § 116.11(a).

³² 11 C.F.R. § 116.11(b)(1).

³³ *Id.*

³⁴ MUR 7219 Compl. at 2-3.

1 §§ 100.82(b) and 104.3 on the Committee's 2016 Post-General Election Report.³⁵ The loan
2 guaranty was also reported in a 48-hour notice filed with the Commission, in compliance with
3 Section 104.5(f). Similarly, the Committee reported the loan repayment as an in-kind
4 contribution from Murphy and as an itemized disbursement to the lender on its 2016 Year-End
5 Report.³⁶

6 In summary, the Commission finds no reason to believe that Patrick Murphy, Friends of
7 Patrick Murphy and Brian Foucart in his official capacity as treasurer, Thomas Murphy, Jr., and
8 Coastal Construction violated 52 U.S.C. §§ 30116 or 30118 by accepting or making excessive or
9 prohibited contributions to the Murphy campaign in connection with the Committee's bank loan.
10 Further, the Commission finds no reason to believe the Committee violated 52 U.S.C. § 30104(b)
11 or 11 C.F.R. § 116.11 in connection with the Committee's bank loan or its repayment.

³⁵ See also AO 1985-33 (Collins).

³⁶ *Id.*